This view has the support of an able text-writer. See TAYLOR, CORP. 5th ed., 559 b. This should apply under all circumstances, even though the corporation is not voting to ratify an existing though voidable contract, but, as in the principal case, is voting to validate an entirely void agreement

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TRANSFER OF TITLE TO PERSONALTY WHERE SOMETHING REMAINS TO BE DONE. — The intention of the parties is generally admitted to be the controlling factor in deciding when the title to personal property passes to a purchaser. See *Martineau* v. *Kitching*, L. R. 7 Q. B. 436. To obtain some uniformity in decisions, the courts have established artificial rules to determine that intention, the principal one of which is that when something remains to be done to the goods there is a presumption that title has not passed. This is properly a presumption of fact which may be rebutted if a contrary intention be shown, although in England in the special case of goods which are to be separated from a greater mass, it has been held to be a rule of law. *Graff* v. *Fitch*, 58 Ill. 373. See *Austen* v. *Craven*, 4 Taunt. 644.

In England the presumption is raised only when the act is to be done by the vendor. *Turley* v. *Bates*, 2 H. & C. 200. Probably this distinction arose from two circumstances. First, if what remains to be done is vital, as completion of goods before delivery, it is much more likely to be done by the vendor. Second, if the act to be done is to be performed by the vendee, it will probably be preceded by delivery to him, and that is in itself enough to show that title has passed. *Haxall, etc., Co.* v. *Willis*, 15 Gratt. (Va.) 434. In the absence of these accompanying circumstances there appears to be little weight in this English distinction, and it is not generally adopted in this country. *Ballantyne* v. *Appleton*, 82 Me. 570.

It is obvious that among the things to be done before a transaction is complete, there are some which are so vital in their nature that it is almost certain that sellers and purchasers will not intend to pass title until they are done. The separation of goods from a greater mass is an example of this. The parties might sell an undivided interest in the mass, but they will in general intend a sale of an ascertained quantity. *Kimberly* v. *Patchin*, 19 N. Y. 330; *Warren* v. *Buckminster*, 24 N. H. 336. Consequently they will intend that the goods shall be separated before title passes. Again, where the goods have to be changed or altered in some way to put them in a condition to fulfil the terms of the sale, title will usually not be intended to pass until this is done. *West Jersey, etc., Co.* v. *Trenton, etc., Co.*, 32 N. J. Law 517. The same would seem to be true where the goods must be inspected to ascertain whether they conform to the requirements of the contract.

On the other hand, there are many cases where the only thing to be done is some slight act, such as measuring or weighing the goods in order to determine the exact price to be paid. Thus in a recent North Carolina case the principal thing remaining to be done was to measure the wood sold. No notice was taken of the relative unimportance of the act, and the court applied the usual presumption. *Porter* v. *Bridgers*, 43 S. E. Rep. 551. Yet when parties contract to sell a definite mass of goods which are ready for delivery, it is probable that they intend to regard the goods as the purchaser's from that time, even though the exact price is to be determined later. A few cases have therefore taken the view that in trans-

actions of this sort the presumption does not exist. *Sanger* v. *Waterbury*, 116 N. Y. 371. It is to be regretted that such a desirable result has not been reached more frequently. But the general law is undoubtedly that even when the only thing that remains to be done is to ascertain the price the presumption is that title has not passed. *Devane* v. *Fennell*. 2 Ired. (N. C.) 36. It is submitted, however, that even slight evidence of a contrary intent, such as part payment of the price, should be sufficient to overthrow the presumption. *Cf. Byles* v. *Colier*, 54 Mich. 1.

HAS A TRUSTEE A DUAL PERSONALITY? — The proposition that a judgment against a person sued as an individual does not work an estoppel in a second action in which he appears in order to litigate rights which he has as a representative, is laid down by several text-writers. 2 BLACK, JUDG. § 536; 1 FREEMAN, JUDG. § 156. The reason assigned is that every representative has in legal contemplation a representative personality, distinct from his individual personality. See WELLS, RES ADJUDICATA § 21. By an application of this doctrine, a recent Kansas case holds that judgment in a foreclosure suit against a person individually does not bar him from subsequently setting up a claim to the property as trustee. *Farmers', etc., Co.* v. *Essex*, 71 Pac. Rep. 268.

It is undoubtedly true that some classes of representatives have received in their representative capacity a legal recognition which justifies in their case the application of the doctrine under discussion. An executor, for example, is treated in his official capacity as continuing the personality of his testator. The goods of the estate were not forfeited for the executor's treason; nor could they be taken in execution on a judgment against him as an individual; and personal disability did not prevent him from maintaining an action as executor. 1 HALE P. C. 251; WENTW. OFF. EX. 14th ed. 36; *McCleod* v. *Drummond*, 17 Ves. 152, 169. It is accordingly almost universally held that matters concluded in an action to which an executor, as such, was a party, are not *res judicata* in an action in which he appears as an individual. *Carey* v. *Roosevelt*, 102 Fed. Rep. 569. There has been, however, no such recognition of the official personality of the trustee. Trust property was liable to forfeiture for his crime, and his title in the trust *res* could be taken in execution by his creditors. *Stith* v. *Lookabill*, 71 N. C. 25; see *Pawlett* v. *Atty. General*, Hard. 466.

It might be argued, however, that although the trustee in his representative capacity has not been accorded legal recognition for other purposes, he should receive it for purposes of judgment. Although the doctrine of the text-writers already noted appears to sustain this view, an examination of the cases cited in support of it will show that a large proportion of them are not in point, since they were decided on the ground that the issue in question in the second suit was not involved in the first. See *McNutt* v. *Trogden*, 29 W. Va. 469. Practically all the remaining cases concern executors or other representatives whose separate official existence has been recognized by the law. Furthermore, an examination of the cases concerning trustees shows the weight of authority to be against the partial recognition suggested. Thus a recent Kentucky case holds that although the defendant was summoned as trustee, she was present in her individual capacity. *Commonwealth* v. *Hamilton*, 72 S. W. Rep. 744. This accords with the doctrine of other jurisdictions. *Shephard* v. *Creamer*, 160 Mass. 496.